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February 16, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Review of the Part 32 Uniform System of Accounts, WC Docket No. 14-130

Dear Ms. Dortch:

On February 15, 2017, Jennifer McKee and Steve Morris of NCTA – The Internet & Television Association (NCTA) and Paul Glist of Davis Wright Tremaine met with Pam Arluk, Dick Kwiatkowski, Doug Slotten, Victoria Goldberg, and Robin Cohn of the Wireline Competition Bureau to discuss the above-referenced proceeding. In the meeting, NCTA made points consistent with our ex parte letter dated February 8, 2017.

NCTA reiterated that pole owners possess a monopoly with respect to access to poles and consequently the Commission has subjected and continues to subject those carriers (even “price cap” carriers) to traditional cost-based rate regulation. NCTA expressed concern that in some cases, e.g., pole maintenance, GAAP accounting does not track investment and expenses at the same level of detail required today under Part 32 and that this mismatch could lead to harmful increases in pole attachment rates. Such increases are unwarranted given that these carriers will not actually be spending more money on poles or pole maintenance as a result of the transition from Part 32 to GAAP. As NCTA and others have explained, a temporary freeze on rate increases would address such concerns.¹

NCTA also discussed the proposed 12-year transition period for rate increases attributable to the initial transition from Part 32 to GAAP. While the transition period should be helpful in avoiding rate shock due to changes made during the initial accounting transition, it will not do anything to protect against subsequent accounting changes. While such changes should be rare if the carriers apply GAAP consistently over time, as a safeguard the Commission should consider applying the 12-year transition to any rate increases attributable to accounting changes during the first three years a carrier is using GAAP, not just the initial transition.

¹ See Letter from Thomas Cohen, Counsel for ACA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (filed Feb. 15, 2017).

NCTA also expressed concern regarding the transparency of rate calculations under a GAAP-based system. Under the current regime, rate complaints involving ILEC pole owners are exceedingly rare because all the relevant information for calculating rates is publicly available and both sides to a negotiation understand where the end point should be when that public data consistently derived under Part 32 is applied to the Commission's rate formulas.² In contrast, it is not clear that attaching parties will have the same access to data or the underlying accounting protocols and procedures under the GAAP-based regime proposed by the ILECs that would replace Part 32 accounting when disputes arise.³ Accordingly, as a condition of opting out of Part 32, NCTA recommends that the Commission require price cap carriers to make the underlying accounting data (and associated cost allocations) used to calculate pole attachment rates available on request of attaching parties, and not in secret submissions that require parties to file complaints to resolve every pole dispute with every price cap carrier in every state.

Finally, the Commission should closely monitor ILEC pole and conduit attachment rates for the first few years following the transition to GAAP accounting. The ILECs have explicitly stated that their proposal is "not an effort to increase pole attachment rates" and "not an attempt to do some other rate- or cost-shifting."⁴ NCTA appreciates these good faith statements from USTelecom, but given the importance of pole attachment rates to broadband deployment, it is critical that the Commission include language in the item confirming these expectations and establishing a framework to monitor the implementation of this new regime and ensure that there are no unanticipated rate increases that would harm broadband deployment. To the extent the Commission finds early indications that rates are rising more quickly than expected, it should not hesitate to revisit any relief it has granted.

To implement some of the suggestions made above, attached to this letter is a proposed revision to the rule changes suggested by the ILECs.⁵ The new rule section would be added to the discovery section of the pole attachment complaint rules. The underlined language suggested by NCTA would provide attaching parties with the right to access GAAP information used by the carriers in calculating pole attachment rates. It also would extend the 12-year transition period to any rate increase attributable to accounting changes during the first three years after a carrier opts out of Part 32, rather than just the initial accounting change to GAAP.

² For example, the Commission's accounting and pole rules tell ILECs that pole maintenance should include inspection and troubleshooting, exclude certain other costs, and be based on original (historic) cost only. 47 C.F.R. §§ 32.5999(b)(3), 1.1404(g)(2), 1.1404(h)(2). The ILECs have not proposed any similar requirement in GAAP.

³ USTelecom states that "price cap carriers would continue to provide the cost report used to calculate the pole rates, using GAAP," but it does not address whether any party other than the Commission will have access to such report. Letter from B. Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (filed Feb. 14, 2017) at 2.

⁴ *Id.*

⁵ See Letter from Timothy Boucher, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (filed Jan. 26, 2017).

Ms. Marlene H. Dortch
February 16, 2017
Page 3

Respectfully submitted,

/s/ Steven F. Morris

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ATTACHMENT

§ 1.1425 [PROPOSED NEW SECTION]

Price cap carriers opting-out of Part 32 may calculate attachment rates for their poles, conduits, and rights of way using either Part 32 accounting data or GAAP accounting data. Price cap carriers using GAAP accounting data to compute rates to attach to their poles, conduits, and rights of way must adjust (increase or decrease) their annually computed GAAP-based rates by an Implementation Rate Difference for each of the twelve years after opting-out. The Implementation Rate Difference means the difference between attachment rates calculated by the price cap carrier under Part 32 and under GAAP as of the last full year preceding the carrier's initial opting-out of Part 32 USOA accounting requirements. In addition, any increase in GAAP-based attachment rates due to subsequent accounting changes in the first three years after a carrier opts-out of Part 32 must be phased in by equal increments over the twelve years after opting-out. Price cap carriers using GAAP accounting data to compute rates to attach to their poles, conduits, and rights of way must provide the underlying accounting data (and associated cost allocations) on request by a cable television system, any telecommunications carrier, or an association of such parties. This data production requirement shall apply with respect to all service areas, including states that have provided certification to the Commission.